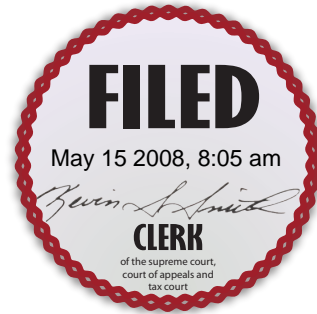


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WENDELL PEGUES,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 18A04-0711-CR-610
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0704-FC-13

May 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Wendell Pegues appeals his conviction for battery, as a class C felony.¹

We affirm.

ISSUES

1. Whether the trial court abused its discretion in admitting evidence.
2. Whether there is sufficient evidence to support the conviction.

FACTS

On April 5, 2007, Kimberly Sandridge worked at her construction job from before noon until approximately 10:30 p.m. Sandridge drank a pint of vodka while at work and purchased another half of a pint after leaving work. Sandridge then went to Pegues' apartment. Pegues lived in the rear unit of a multiple-unit residence in Muncie.

Pegues was home when Sandridge arrived at the apartment. Sandridge believed that Pegues had been drinking because he was "suspicious" and "asking [her] a lot of questions," as he would do when he became intoxicated. (Tr. 156). In fact, Pegues had been using crack cocaine and drinking vodka.

After Sandridge told Pegues that she was going to visit her daughter, Pegues "reached under the couch and grabbed a steak knife." (Tr. 158). Pegues then "jumped up on top of" Sandridge, straddling her. (Tr. 158). Pegues held the knife to Sandridge's throat and then brought it across Sandridge's throat, saying "You're playing games, bitch, I'll kill you." (Tr. 159).

¹ Ind. Code § 35-42-2-1(a)(3).

After a struggle, Sandridge got Pegues off of her, ran outside and banged on the door of Charles Lewis, who lived in the front apartment. Lewis did not open the door.

Pegues then “got a hold of [Sandridge] and got [her] back into the house,” by grabbing and pulling her. (Tr. 160). Sandridge “ended up in the kitchen balled up” and told Pegues that her “throat was hurting.” (Tr. 162). Sandridge thought she was losing blood “from [her] throat.” (Tr. 163). Sandridge believed that she lost consciousness. Eventually, Sandridge managed to get out of the apartment and go across the street, to the home of Richard Wright, Jr.

Wright went to his front door after he heard someone banging on it and saw Sandridge. Sandridge “was on her knees,” and Pegues “was on top of her.” (Tr. 84). Pegues “was smacking [Sandridge] on top of the head” with his hand. (Tr. 84). Sandridge “was bleeding all over the place.” (Tr. 85). Wright pushed Pegues off of Sandridge and told him to get off the porch. Wright then went inside and called 911.

After Sandridge left Wright’s porch, a man named Jim helped her cross the street. Once across the street, Sandridge again knocked on Lewis’ door. When Lewis’ girlfriend, Rachelle Carman, opened the door, she saw Sandridge “in a puddle of blood.” (Tr. 112). Sandridge told Carman “that her throat had been cut,” and that Pegues had done it. (Tr. 114). Carman observed a scratch on Sandridge’s neck and blood coming from the top of Sandridge’s head. Carman could see Pegues standing outside the door.

Officer Ron Miller of the Muncie Police Department responded to a report of a stabbing at the Pegues residence. Upon his arrival, Officer Miller observed Sandridge, lying on the front porch, and “a lot of blood.” (Tr. 70). Sandridge “was bleeding

severely from the neck area and the head area.” (Tr. 79). Carman informed Officer Miller that she had “heard them fighting,” and Sandridge saying, “he cut me, he cut me.” (Tr. 73). After Sandridge has been taken to the hospital, Officer Miller observed Pegues, who “had a white t-shirt on that had some blood on it.” (Tr. 74).

Physician assistant Christopher Stephenson treated Sandridge at Ball Memorial Hospital. Stephenson observed that Sandridge was “frantic, hysterical,” had a laceration to the “back of her scalp,” and “some scraps [sic] on her face and neck.” (Tr. 125). The scrapes to Sandridge’s neck were “pretty superficial” (Tr. 128). The scalp wound, however, required four to six staples to close, and was the kind of injury that would “bleed a lot” (Tr. 127). Sandridge told Stephenson that “her boyfriend had cut her.” (Tr. 129).

Officer Rodney Frasier, a sergeant with the Muncie Police Department, processed the crime scene for evidence. Officer Frasier noted a “wooden handle knife, which was consistent with a steak knife,” lying on the floor of Pegues’ apartment, just outside the kitchen area. (Tr. 191). Officer Frasier “observed that the tip of it was also blood stained.” (Tr. 191). Officer Frasier further observed hair “adhered to the handle of the knife.” (Tr. 221). The hair was “long [and] light brown” (Tr. 221). DNA extracted from the blood on the knife matched Sandridge’s DNA. Officer Frasier also took samples of blood found on Pegues’ hands, which proved to be “blood from . . . Sandridge” (Tr. 208).

On April 11, 2007, the State charged that Pegues:

knowingly touch[ed] Kimberly R. Sandridge in a rude, insolent, or angry manner, to wit: struck Kimberly R. Sandridge with his hands, resulting in serious bodily injury, to wit: a large laceration to her head, contrary to the form of the statutes in such cases made and provided by I.C. 35-42-2-1(a)(3)

(App. 10).

On August 3, 2007, Pegues filed a motion in limine, seeking to exclude testimony regarding “the presence or use of a knife during the commission of the alleged offense” (App. 89). Pegues asserted that such evidence would be “evidence of other offenses not charged” as the State did not charge Pegues with committing battery by means of a deadly weapon. (App. 89). The trial court denied Pegues’ motion in limine.

A jury trial commenced on August 6, 2007. During the trial, the trial court admitted evidence pertaining to the knife over Pegues’ objection. The jury found Pegues guilty as charged. On October 1, 2007, the trial court sentenced Pegues to six years in the Department of Correction.

Additional facts will be provided as necessary.

DECISION

1. Admission of Evidence

Pegues asserts that the trial court abused its discretion in admitting evidence regarding the knife. The admission of evidence is a matter left to the sound discretion of the trial court, and a reviewing court will reverse only upon an abuse of that discretion. *Patton v. State*, 725 N.E.2d 462, 463 (Ind. Ct. App. 2000). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). In

determining the admissibility of evidence, the reviewing court will consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Prewitt v. State*, 761 N.E.2d 862, 869 (Ind. Ct. App. 2002).

During the trial, Sandridge testified that Pegues took a steak knife from under the couch and held it to her throat, then brought the knife back and forth against her throat. Officer Frasier testified that he discovered a knife, similar to the one observed by Sandridge, in Pegues' home. Officer Frasier further testified that the knife had Sandridge's blood on it as well as her hair.

Pegues argues that the trial court abused its discretion in admitting evidence concerning the knife because it was evidence of Pegues' prior bad acts. Indiana Evidence Rule 404(b) provides in pertinent part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

The purpose of this rule is "to prevent the jury from assessing the defendant's guilt in the present case on the basis of his past propensities." *Bryant v. State*, 802 N.E.2d 486, 498-99 (Ind. Ct. App. 2004), *trans. denied*. Thus, the State may not admit evidence of prior bad acts where it offers the evidence for the sole purpose of creating a forbidden inference that the defendant's present charged conduct is in conformity with his prior bad conduct. *Id.* at 499. When a defendant objects to the admission of evidence on the grounds that it violates Evidence Rule 404(b), we must: (1) determine whether the evidence is relevant to a matter at issue other than the defendant's propensity to commit

the charged act; and (2) balance the probative value of such evidence against its prejudicial effect. *Wertz v. State*, 771 N.E.2d 677, 683-84 (Ind. Ct. App. 2002).

Evidence Rule 404(b), however, “does not bar evidence of uncharged acts that are ‘intrinsic’ to the charged offense.” *Wages v. State*, 863 N.E.2d 408, 411, (Ind. Ct. App. 2007), *trans. denied*.

“Other acts are ‘intrinsic’ if they occur at the same time and under the same circumstances as the crimes charged.” By contrast, the paradigm of inadmissible evidence under Rule 404(b) is a crime committed on another day in another place, evidence whose only apparent purpose is to prove the defendant is a person who commits crimes. “Evidence of happenings near in time and place that complete the story of the crime is admissible even if it tends to establish the commission of other crimes not included among those being prosecuted.”

Id. (internal citations omitted). We will affirm the trial court’s admission of evidence of prior bad acts or misconduct if it is sustainable on any basis in the record. *Bryant*, 802 N.E.2d at 499.

In this case, the evidence showed that Pegues became angry with Sandridge; Pegues then threatened and assaulted Sandridge with a knife. The initial assault escalated into a struggle between Pegues and Sandridge, which led to Sandridge sustaining a scalp wound.

The evidence concerning the knife clearly gave a more complete and accurate story of the crime. Furthermore, Pegues’ act of brandishing the knife and holding it to Sandridge’s throat occurred during the same time period and under the same circumstances as the crime charged. We therefore cannot say that the trial court abused its discretion by allowing the evidence pertaining to the knife.

2. Sufficiency of the Evidence

Pegues asserts that the evidence is insufficient to support his conviction. Specifically, Pegues contends “that there is simply no evidence that [he] caused” the laceration to Sandridge’s scalp. Pegues’ Br. 10.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*.

Stephenson testified that Sandridge’s scalp wound was a “linear laceration[,]” lacking any swelling, which was inconsistent with having been caused by a fall but “was consistent with something sharp.” (Tr. 133). Stephenson further testified that the laceration to Sandridge’s scalp required several staples to close it and was the type that would cause profuse bleeding. Several witnesses testified that they observed Sandridge bleeding profusely; Carman testified that Sandridge was “bleeding from the back of her head.” (Tr. 114). Officer Frasier testified that while processing the crime scene, he

discovered a knife, which had “long light brown hairs” stuck to it. (Tr. 221). Officer Frasier also testified that tests confirmed that Sandridge’s blood was on the knife. Sandridge testified that Pegues had brandished a knife and threatened her with it. Sandridge, however, admitted during trial that she did not know how she sustained the cut to her scalp. Despite Sandridge’s inability to specifically recall how she got her scalp wound during the ordeal with Pegues, there was sufficient circumstantial evidence from which the jury could have reasonably inferred beyond a reasonable doubt that Pegues committed battery, resulting in serious bodily injury to Sandridge.

Affirmed.

NAJAM, J., and SHARPNACK, Sr. J., concur.